NEPA Categorical Exclusions

Text from U.S. Department of the Interior Departmental Manual 6, Section 516, Chapter 8.5 (516 DM 8.5)

The text presented below is from the above-cited section of the Department of Interior Departmental Manual (DM). This section is referred to in FWS Form 3-2185 (attached) as 516 DM 6 Appendix 1.

Sections of text that are relevant to the Lakepoint Wetland NRDA Restoration Project are highlighted by <u>underlined</u>, <u>bold text</u>; notes and comments documenting the reasoning used (in the evaluation of whether the actions anticipated in the Lakepoint Restoration Plan are categorically excluded under NEPA) are noted in **bold italic text**.

8.5 Categorical Exclusions. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under 516 DM 2, Appendix 2 of the Departmental Manual, the Departmental categorical exclusions cannot be used. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

A. General.

- (1) Changes or amendments to an approved action when such changes have no or minor potential environmental impact.
- (2) Personnel training, environmental interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.
- (3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.
- (4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 DM 2 and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

NOTE: This exclusion does not apply in the case of the Lakepoint

NRDA Restoration Project because DOI (or a bureau within DOI) is not acquiring real property

- B. <u>Resource Management</u>. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, tribal, and local governments.
 - (1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.
 - (2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.
 - (3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.
 - (a) The installation of fences.
 - (b) The construction of small water control structures.
 - (c) The planting of seeds or seedlings and other minor revegetation actions.
 - (d) The construction of small berms or dikes.
 - (e) The development of limited access for routine maintenance and management purposes.

This section addresses the restoration actions that are anticipated at the Lakepoint Wetland site, and form the basis for the determination that the anticipated activities are categorically excluded from the requirements of NEPA.

- (4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.
- (5) Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Service

procedures.

- (6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible environmental disturbances are anticipated.
- (7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.
- (8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.
- (9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.
- (10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.
- (11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive

 Environmental Response Compensation and Liability Act (CERCLA); section 311(f)(4) of the Clean Water Act; and the Oil Pollution Act; when only minor or negligible change in the use of the affected areas is planned.

This section is also relevant to the Lakepoint Restoration Plan, which is one of the outcomes of a settlement between DOI and the Kennecott Utah Copper Corporation (KUCC) to settle a claim for natural resource damages at the KUCC North Zone Wetlands, which are within the KUCC North Zone (OU-22) CERCLA site, Salt Lake County, Utah. See accompanying Restoration Plan and attachments (including Consent Decree between DOI and KUCC).

C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

- (2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan.
- (3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.
- (4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible environmental disturbances are anticipated.
- (5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.
- (6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.
- (7) Activities directly related to the enforcement of fish and wildlife laws, not included in 516 DM 2, Appendix 1.4. These activities include:
 - (a) Assessment of civil penalties.
 - (b) Forfeiture of property seized or subject to forfeiture.
 - (c) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.
- (8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected actions where the Service is a cooperating agency.
- D. Recovery Plans. Issuance of recovery plans under section 4(f) of the ESA.
- E. Financial Assistance.

(1)	State, local, or private financial assistance (grants and/or cooperative
	agreements), including State planning grants and private land restorations,
	where the environmental effects are minor or negligible.

(2)	Grants for categorically excluded actions in paragraphs A, B, and C,
	above; and categorically excluded actions in Appendix 1 of 516 DM 2.

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State: Federal Financial Assistance Grant/Agreement/Amendment Number: N/A

Grant/Project Name: "Draft Restoration Plan and Environmental Action Statement (Draft RP/EAS) for the Preservation, Restoration and Management of the Lakepoint Wetlands Site, Tooele County, Utah" This proposal ✓ is; □ is not completely covered by:					
✓	categorical exclusion 8.5 B(3) and 8.5 B(11),516 DM 6, Appendix I (Chapter 8).				
completing t proposal car circumstanc	posed activities. An appropriate categorical exclusion must be identified before the remainder of the Checklist. If a categorical exclusion cannot be identified, or the mot meet the qualifying criteria in the categorical exclusion, or an extraordinary e applies (see below), an EA must be prepared.)				
Will This P	ary Circumstances: roposal (check (🗸) yes or no for each item below):				
Yes No	1 77				
	 Have significant adverse effects on public health or safety. Have significant adverse effects on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas under Federal ownership or jurisdiction. 				
□ ✓	3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].				
□ ✓	4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.				
□ ✓	5. Have a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.				

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	✓	6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
	✓	7. Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office, the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, or a consulting party under 36 CFR 800.
	✓	8. Have significant adverse effects on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant adverse effects on designated Critical Habitat for these species.
	✓	9. Have the possibility of violating a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
	✓	 Have the possibility for a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).
	✓	11. Have the possibility to limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).
	1	12. Have the possibility to significantly contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).
	any of the epared.)	above extraordinary circumstances receive a "Yes" check (\checkmark), an EA must be
1	Yes □ N	No This grant/project includes additional information supporting the Checklist.

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Concurrences/Approvals/				
Project Leader: Date:				
State Authority Concurrence: N/A Date: N/A				
(with financial assistance signature authority, if applicable) Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the grant/agreement/amendment:				
✓ is a categorical exclusion as provided by 516 DM 6, Appendix 1 and/or 516 DM 2, Appendix 1. No further NEPA documentation will therefore be made.				
□ is not completely covered by the categorical exclusion as provided by 516 DM 6, Appendix 1 and/or 516 DM 2, Appendix 1. An EA must be prepared.				
Service signature approval: RO or WO Environmental Coordinator:				
Date:				
Staff Specialist, Division of Federal Assistance: N/A				
Date: (or authorized Service representative with financial assistance signature authority)				
FWS Form 3-2185 OMB Control Number 1018-0110 Revised 02/2004 Expiration Date 06/30/2007				

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NOTICE

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501et seq.), please be advised that:

- 1. The gathering of information from potential grant recipients is authorized by The National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347). NEPA requires that a number of items be considered prior to any activity under a grant.
- 2. The submission of requested information is required for entities competing for federal assistance grants. This completed checklist is a record that these NEPA issues were considered prior to commencing grant activity.
- 3. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.
- 4. This information collection has been approved by OMB and assigned clearance number 1018-0110.
- 5. The requested information may be subject to disclosure under provisions of the Freedom of Information Act (5 II S.C. 552)

The public reporting burden for the information collected on this form is 30 minutes. This burden estimate includes time for reviewing instructions, gathering data, and completing and reviewing form. Comments on this form should be mailed to the Information Collection Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. Thank you.